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IN THE

Supreme Court of the United States

October Term, 1968.

No. 1370.

ALEXANDER H. LINDSAY,
Appellant,

v.

JOSEPH J. KELLEY, JR.,
Secretary of the Commonwealth of Pennsylvania,
Appellee.

APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS AND REPLY TO MOTION OF THE PENNSYLVANIA BAR ASSOCIATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE.

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A. Contra Amicus "History of Constitutional Reform in Pa."

Characteristic of its position in this case, the Pennsylvania Bar Association has represented to this Court "facts" not of record, generalities and conclusions, the authenticity of which are in question. Appellant vigorously objects to the "History of Constitutional Reform in Pennsylvania" as simply not relevant to any Federal issue and largely inaccurate. The need for constitutional revision is not questioned by appellant. He simply believes with many

millions of Pennsylvanians that they were entitled to revision without retardation. Appellant and those interested in this case belong to no group of special interests and are unaffected by this litigation in any way other than as every other person in this Commonwealth. They strongly except to any inference to the contrary.

To be convinced of the need for deliberation and debate by an informed electorate one need only read the Bar Association's Brief p. 7 for the litany of political and social pressures brought to bear on the public during the eighteen frantic days between publication and vote.

Appellants and amicus have made the emotional appeal that much has been spent in effort and money to implement the new judiciary article. This may be true. But, it is a matter of no import when the loss is weighed against the value of the basic rights upon which this case pivots. By way of answer, we need only look at the segregation decisions of This Court. When the equal but separate facilities doctrine was declared unconstitutional, the economic loss to the South was enormous and regrettable but manifestly necessary. Certainly it could not be suggested that loss of money and inconvenience warranted the perpetuation of injustice.

B. All Federal Issues Were Before the Court Below.

As a hallmark of these inaccuracies, the Pennsylvania Bar Association categorically claims that "[t]he complaint itself made not a single reference to the Constitution of the United States or any questions arising thereunder" and "[o]nce again, there was not a single reference in the Amended Complaint to the Constitution of the United States or any questions arising thereunder." *Brief Amicus Curiae* pp. 9, 10. This is just not so. Had Bar Association counsel read the complaint, they would have discovered, as

did the Attorney General of Pennsylvania, that paragraph 9 of Appellant's Amended Complaint alleges:

> "Plaintiffs are informed, believe, and therefore aver that Proposal No. 7, appearing as Ballot Question V, proposing an amendment to Article V of the Constitution is contrary to and violative of the constitutional guarantees of the separation and balance of legislative and judicial power beyond the scope of the convention's powers by effectively eliminating from the court of the Commonwealth all constitutional power."

Appellees and amicus choose to ignore Briefs of counsel and the opinions below where it is evident that all issues in the jurisdictional statement were before the Pennsylvania Courts.[1] They ignore also that "[t]here can be no question as to the proper presentation of a federal claim when the highest state court passes on it." *Ralery v. State of Ohio*, 360 U. S. 423, 436, 79 S. Ct. 1257, 1265.[2]

C. Ex Officio Delegates.

Appellee and amicus misconstrue appellant's argument on the invasion into the convention by the thirteen non-elected delegates. They argue that since the conven-

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1. Without detailing all such references in the Court below, the following amply satisfy this inquiry:
   a. Ex-officio delegates violative of equal protection—Majority Opinion, Bell, C. J. (Jurisdictional Statement pp. 12a-14a) and Dissent of Cohen, J. (Jurisdictional Statement pp. 23a-27a)
   b. Due Process—Brief of Interested Person in Pennsylvania Supreme Court, attached hereto at pp. 1a-6a.
   c. Judicial v. Legislative Supremacy—appellants complaint and amended complaint ibid.

2. See also *Douglas v. State of Alabama*, 380 U. S. 423, 85 S. Ct. 1074 and *Manhattan Life Ins. Co. of New York v. Cohen*, 234 U. S. 123, 34 S. Ct. 874.

tion only "proposes", the people "dispose", this satisfies the equal protection requirements. This reasoning ignores the basic concept of equal protection. The wrong protected against is the "election" of disproportioned representatives. It is beyond argument that if a legislature allowed thirteen non-elected persons to participate as its leaders and organizers in its deliberations with full power to debate and vote, nothing could vitiate this misconduct. The violation is in the lack of "equal representation . . . for equal numbers of people . . ." *Wesberry v. Sanders,* 376 U. S. 1, 14 (1964).[3] No legerdemain or subsequent conduct can validate what had to be void at the outset.

Act No. 2 was the product of the Pennsylvania legislature and it became the mid-wife in delivering this Convention to the people. The legislature, not the convention, provided for the "13 ex officio delegates" and it is the constitutionality of Act No. 2 that is here in issue—not the debates in convention.

All delegates to this convention, except the ex officios, were *elected* at the general election in November, 1967 by the people of the Commonwealth and constituted an elected body sanctioned by the Commonwealth supposedly to speak on behalf of the people, in precisely the same way as the legislature. The convention performed exactly what the legislature could do, and did many times in the past,—submit constitutional amendments to the people. The appellee sees a distinction without a difference.

Justice Cohen perceived this and noted in his dissenting opinion:

> "Even if we ignore appellant's contention that Act No. 2 of the 1967 Session did not properly follow

3. Also, *Kirkpatrick v. Preisler, Henkel v. Prisler,* 394 U. S. 526, 89 S. Ct. 1225, and *Wells v. Rockefeller,* 394 U. S. 542, 89 S. Ct. 1234.

Article 18 of the 1874 Constitution, we must, nevertheless, determine whether a proper body for revision of the existing lawful frame of government was constituted by Act No. 2. I am constrained to hold that because section 2 of the Act provides for 13 *ex officio* members in addition to 150 elected delegates, that the *ex officio* members so dilute the elected body established for revision of the frame of government that it is not representative of the whole people and hence, unlawful and void. (Footnotes omitted.)

"The essence of a constitutional convention is only maintained if it represents the people. It is a substitute for the gathering of the entire populace. The presence of *ex officio* delegates exercising the full powers of elected delegates is foreign to the concept of a convention as a gathering of the people. Thus, there was no convention and nothing which flowed from it is valid even if the product of the convention is subsequently approved by the majority of the voters." (Supplemental Statement pp. 24a, 25a.)

Not only were these non-elected delegates permitted to debate and vote but by authority of Act No. 2 they constituted a Preparatory Committee with subpoena power to conduct ". . . broad studies, inquiries, surveys or analyses [they] may deem relevant . . ."[4] These stalwarts of the legislature were therefore not only delegates without a mandate but the clique which determined the subject matter and procedure for the convention.

As was further observed by Justice Cohen:

"I recognize that the leadership of the General Assembly that approved the Act held within their

4. For text, see Jurisdictional Statement p. 25a, footnote 2.

political power the 'yes' or 'no' on whether a constitutional convention should be called. But those in favor of a convention should not have surrendered the very essence of government in order to have the General Assembly pass the call. The cost was too high. It permitted the leadership of the General Assembly to become part of the convention without exposing themselves to the will of the people, and to influence, if not control, the convention's deliberations. (Footnote omitted.) I see a dangerous threat to government as we know it by acquiescing in this unprecedented usurpation. (Footnote omitted.)

"I cannot accept the contention that all prior improprieties and illegalities are rectified by the ratifying vote of the electorate. (Footnote omitted.) Procedures in government instituted for the protection of the mass of people are designated to protect them from the rule of the majority. Our concepts of democracy and minority rights have far transcended the philosophy that 'might makes right.'" (Jurisdictional Statement, pp. 25a to 27a).

D. Judicial v. Legislative Supremacy.

Again the Amicus brief incorrectly concluded that "[n]owhere in the proceedings in the state courts did appellant ever contend that the asserted shift of power from the judiciary to the legislature raised a federal question" and "[t]he argument having not been made by the Appellant in the Pennsylvania courts and having not been actually decided by the Supreme Court of Pennsylvania, it cannot be entertained here." *Brief Amicus Curiae,* p. 15. The complete answer to these baseless assertions is paragraph 9 of Appellant's Complaint; Appellant's brief in the

Supreme Court of Pennsylvania, p. 20 entitled "The Convention Acted Unconstitutionally by Usurping a Power Without the Limitations Placed upon it by the Enabling Act and, Further, by the Delegation of Power Given to the Judiciary in Violation of the Separation of Power Doctrine thus creating a Suzerainty of the Legislature over the Judiciary"; Appellant's Brief, p. 84, et seq. and the opinion of Chief Justice Bell, which states that "[a]ppellants vigorously urge this Court to declare the new Judiciary Article of the Pennsylvania Constitution null and void on the ground that it violates the traditional and fundamental concepts inherent in the separation of jurisdiction and powers among the three branches of our Republican Form of Government (Art. IV, Sec. 4, of the Constitution of the United States)." (Jurisdictional Statement, p. 14a). It was in light of this "vigorous" urging by Appellant that the Supreme Court of Pennsylvania went on to ". . . discuss specifically the provisions of the new Judiciary Article which are alleged to violate, obliterate and destroy the jurisdiction and the powers . . .", of the judiciary in Pennsylvania. (Jurisdictional Statement, p. 15a).

On the substantive issue appellees and amicus continue to misconstrue appellant's position. They talk of "Supreme Judicial Power" and all its trappings as being the complete answer. But nowhere in the arguments or analyses, including the opinions of the Supreme Court of Pennsylvania, has anyone answered the question posed by Section 10(c) of the amendments, which prohibits the Supreme Court of Pennsylvania from ". . . affect[ing] the right of the General Assembly to determine the jurisdiction of any court or justice of the peace . . ." (Jurisdictional Statement, p. 10).

Simply stated, these nineteen words create for the first time in American Jurisprudence an absolute control by the legislature over the judiciary. Other constitutions provide that the jurisdiction of Supreme Courts can be "provided by law". There is nothing exciting in this phrase. Should a legislature enact a statute detailing jurisdiction of a Supreme Court which offends either the state or federal constitutions, the court could simply rule it unconstitutional and void. There is a notable difference between the jurisdiction that is "provided by law" and Section 10(c) which prohibits the Supreme Court of Pennsylvania from "affect[ing] the right of the General Assembly to determine the jurisdiction of any court . . ." This clearly prevents the Supreme Court of Pennsylvania from reviewing any legislation "determining the jurisdiction of *any* court" (Emphasis ours). Consequently, the Pennsylvania legislature has the absolute, final and uncontestable right to decree by statute the jurisdiction of the Supreme Court of Pennsylvania and this statute cannot be reviewed by the Courts of Pennsylvania. This utterly destroys the "power" of the Supreme Court of Pennsylvania and the Republican Form of Government with its recognized separation of power.

By comparison, the broad vision of liberty and independence of the judiciary is most simply stated in the United States Constitution, granting "power" to the United States Supreme Court. (Article III, § 2.)

> "The Judicial Power shall extend to all cases in law and Equity, arising under this Constitution, the Laws of the United States and Treaties made or which shall be made, under their authority . . ."

Chief Justice Marshall described the meaning of Article III, Section 2, when he announced in *Marbury v. Madison,* 1 Cranch 137, 2 L. Ed. 60 (1803):

"If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunal in which it should be vested. The subsequent part of the section is mere surplusage, is entirely without meaning, if such is to be the construction. If Congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction to be original; and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is power without substance."

By definition, judicial power alone encompasses all power necessary to establish control over the orderly conduct of judicial inquiry. *McDonald v. Pless,* 238 U. S. 264, 265, 266 (1915); *Michaelson v. U. S.,* 266 U. S. 42, 65 (1924). Power without jurisdiction is legal castration—power and jurisdiction are inexorably intertwined, infused and ingrafted with one another and indispensably synonymous. Does it not become most clear then: no jurisdiction—no power.

Under these so-called proposals, no guarantee is spelled out; and, absent such direction there are no guarantees. Political discretion is a poor and meaningless substitute to accept in exchange for what has been taken from the people.

As this Court noted in *U. S. v. Hudson & Goodwin,* 7 Cranch 32, 33, 3 L. Ed. 259 (1812):

"If all the courts which the United States may, under their general powers, constitute, only one, the

Supreme Court possesses jurisdiction derived immediately from the Constitution, and which the legislative power cannot deprive it."

The late Justice Musmanno of the Pennsylvania Supreme Court in his dissenting opinion cogently faced this issue:

> "It will be noted by the italicized words [Sec. 10(c)] that the Supreme Court becomes the servant of the Legislature. We have supreme power but it is the Legislature which determines jurisdiction. Why, jurisdiction is the very essence of judicial power! Take away jurisdiction and the courthouse becomes brick, mortar and form.
>
> * * *
>
> "Here again we have the limiting words unless 'otherwise provided by law,' that is, unless the Legislature determines to limit our jurisdiction. If the Legislature may limit our jurisdiction it may control the functions of the Supreme Court. I must repeat my amazement that the majority of this Court can take so lightly such a hazard to the independent functioning of the highest Court in the Commonwealth." (Jurisdictional Statement, pp. 37a-38a).

There can be no argument under the language of the Judicial Article but that there is no guarantee to the citizens of the Commonwealth of Pennsylvania that there will be in existence any court in the Commonwealth with any jurisdiction. With specific reference to what should be the inviolate right of a citizen to a writ of habeas corpus, we see that by virtue of the language of the Judicial Article, there is no court anywhere in the Commonwealth that can be said

to provide a guarantee that it will be in existence with any jurisdiction to entertain a petition for a writ of habeas corpus. *This is a fatal defect in the Judiciary Article.*

This defect affects other freedoms as well. For instance, if there is no court guaranteed to enforce the right, then there can be no effective guarantee of "freedom of speech or of the press," or any other freedom now guaranteed to the people.

The Judiciary Article has completely subordinated the judicial branch of government to the legislature. In effect, it eliminates the judicial branch of government as a separate and independent branch of government. If the legislature has the sole determination of what jurisdiction all the courts of Pennsylvania have, then the judicial branch of government in effect becomes subservient to the legislature and becomes nothing more than a branch of the legislature. There remains in Pennsylvania only two independent and separate branches of government, i.e., the executive and legislative branches.

An independent judiciary is absolutely essential to our basic system of government. Its origin is in the Magna Carta and has enjoyed constitutional protection throughout our history.

E. Abrogation of Pennsylvania Constitutional Protections.

For a thorough understanding of the full significance of Section 10(c) it must be played against a background which recognizes that Act No. 2 authorized only a *limited* constitutional convention and the warrant from the people was severely restricted to "Judicial Administration, Organization, Selection and Tenure" and nothing more.

Any interpretations of the words, "Administration" and "Organization", as used in Act No. 2, ". . . shall be construed according to rules of grammar and according to

their common and approved usage". 46 P. S. 533.[5] If in fact an elector were so enterprising as to research the definitions of these terms in generally accepted dictionaries, he would have found that "administration" means the execution of public affairs as distinguished from policy making; performance of executive duties, the executive functions of government, both general and local, which are *neither legislative nor judicial.* "Organization" refers to the administrative and functional structure, the administrative personnel or apparatus of a business. *Webster's Seventh New Collegiate Dictionary,* G. & C. Merriam Co., p. 12,594 (1965), *American College Dictionary,* Random House, Inc., p. 16,854 (1966).[6]

What elector voting to authorize proposals restricted by "Administration", "Organizations", "Selection and Tenure" could possibly imagine that his constitutional guarantee of tripartite government was on the way out? Indeed, why did the warrant for the Judiciary Article refer to the four limited areas for consideration if it intended that jurisdiction of the judiciary was to be in any way affected? The only matters in Article V of the prior Constitution, which were not covered by the four specified subjects, concerned jurisdiction and jury trial. Indeed, unless the electorate was specifically intended to except jurisdiction and jury trial from the consideration of the conven-

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5. See also—*Commonwealth v. McHugh,* 406 Pa. 566 (1962); *Harris-Walsh, Inc. v. Borough of Dickson City,* 420 Pa. 258 (1966).

6. See *Black Law Dictionary,* West Publishing Co. p. 65 (1951). The term "Administration" has been defined as the managing or conduct of an office or employment; the performance of the executive duties of an institution, business or the like. *Webb v. Frohmiller,* 52 Ariz. 128, 79 P. 2d 510. "Organize" has been defined (*Black Law Dictionary, supra,* p. 1251) "to establish or furnish with organs; to systematize; to put into working order; to arrange in order for the normal exercise of its appropriate functions." *City of Beaumont Independent School District,* 164 S. W. 2d 253, 256.

tion, they would simply have been asked to give unlimited authority to consider Article V. This was not done.

The legerdemain of language which confronted the electors who voted on Act No. 2 consisted of the following, entitled "JUDICIARY—Ballot Question V":

> "Shall Proposal 7 on the JUDICIARY, adopted by the Constitutional Convention, establishing a unified judicial system, providing directly or through Supreme Court rules, for the qualifications, selection, tenure, removal, discipline and retirement of, and prohibiting certain activities by justices, judges, and justices of the peace, and related matters, be approved?"

This innocuous wording revealed no clue that the jurisdiction of the courts was at stake, that the independence of the judiciary was to be compromised, that the separation of power would be ended. Nowhere in the ballot question were the key words, "jurisdiction," "independent judiciary," or "separation of powers," to be found. Deliberate deception was perpetrated on the citizens. This represents a violation of due process under the federal constitution.

CONCLUSION.

It was the deliberate purpose of the founders of the American system to separate the powers of government and, so far as possible, to divide authority. This view of division and limitation in public power was clearly expressed by Jefferson:

> "All the powers of government—legislative, executive and judiciary—result in the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a

> plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others.[7]

The tactic of non-representative constitutional conventions organized and conducted at the will of the legislators with the support of restless majorities, is an enormous threat to individual freedom at the federal as well as the state level. It must now be put to an end.

It is respectfully requested that this Court return the people of Pennsylvania to equal status and forever declare these tactics of expediency anathema.

Respectfully submitted,

JAMES E. BEASLEY,
Attorney for Appellant.

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7. Works, 3:223.

EXCERPT FROM BRIEF OF INTERESTED PERSON IN PENNSYLVANIA SUPREME COURT.

III.

The Referendum on the Convention's Proposals Was Void Because It Was Not Authorized by a Valid Statute and Was Held in Disregard of the Mandates of the Constitution. It Was Also Void Because Inadequate Notice of the Precise Content of the Proposals Denied the People Due Process of Law.

Obviously, the "consent of the governed" cannot be lawfully or validly obtained if it is sought in a manner which violates either the State or Federal Constitution.

The only foundation for the referendum at the 1968 Primary is Act No. 2. *But the foundation crumbles, and with it the referendum, because the Act is plainly contrary to the Constitution.*

The Legislature, by Act No. 2, directed only one publication of the proposals during the first week in April, 1968, and further directed that the proposals be submitted to the electorate in the third week thereafter. But the Constitution, as interpreted by this Court in *Com. ex rel. Attorney General v. Beamish,* 309 Pa. 510, mandates repeated publication, once a month for three months before the election is held. The conflict between the Act and the Constitution is clear and irreconcilable.

As was said in this Court in *Com. ex rel. Smillie v. McElwee,* 327 Pa. 148, 160:

> "Whenever any act conflicts with *any* section of the fundamental law, it is entitled to no further consideration, for whenever the will of the legislature as

declared in a statute is opposed to the will of the people as declared in the Constitution, the former must yield and the latter prevail." (Emphasis is by the Court)

The Constitution was completely disregarded by the Legislature. Therefore, the referendum at the 1968 Primary was held without any valid statutory or constitutional authority, and the vote at the referendum should be declared to be a constitutional nullity.

Furthermore, the failure to give the electorate adequate notice of the actual contents of the proposals and adequate time to study them before casting their votes denied Due Process of Law to *all* of the people. In ordinary litigation, whether it be civil or criminal, Due Process of Law requires that a party be given full and specific notice of what he is called upon to meet, and adequate time to prepare to meet the issues. Are the people to be denied that same right, when asked to approve drastic changes in their fundamental law? What could affect the liberties and property of the people more directly?

The fact of the matter is, that the people were given no adequate knowledge of the matters they were voting upon. The proposals involved numerous complex and radical changes in legislative apportionment, debt limits, taxation, powers of local government, judiciary, etc. The full text of the proposals embraced tens of thousands of words. It was published only once and then, in most newspapers, in type so fine as to be almost impossible to read, even by a person blessed with the best of eyesight. When the voters went to the polls, only 18 days later, all that they had before them were five brief Ballot Questions, cryptic, laconic and affording little or no information of the true content of the proposals. The people were asked to vote blindly and to accept five "package deals" on blind faith, without any opportunity to separate the good from the bad.

To put the matter bluntly, the people were asked "to buy a pig in a poke." A referendum conducted in such fashion cannot possibly be reconciled with Due Process of Law.

Furthermore, the Ballot Questions plainly violated that portion of Article XI, Section 1, of the Pennsylvania Constitution which provides that:

> "When two or more amendments shall be submitted they shall be voted upon separately."

This language is clearly mandatory. It was not within the competence of the Legislature to direct or authorize the lumping of two or more amendments in a single Ballot Question. Yet, the Legislature, by Section 9(a) of the Act of 1967, No. 2, purported to authorize the Convention to frame one Ballot Question for each *Article,* regardless of the number and nature of the amendments contained in the Article.

Ballot Question No. 5, on the Judiciary, for example, flagrantly violated the above quoted constitutional provision. Ballot Question No. 5 showed upon its face that it was submitting no less than NINE separate categories of amendments:

1. Unified Judicial System;
2. Qualifications of Judges and Justices of the Peace;
3. Selections of Judges and Justices of the Peace;
4. Tenure of Judges and Justices of the Peace;
5. Removal of Judges and Justices of the Peace;
6. Discipline of Judges and Justices of the Peace;
7. Retirement of Judges and Justices of the Peace;

8. Prohibited Activities of Judges and Justices of the Peace;

9. "Related Matters" (not specified).

Furthermore, the Ballot Question did not give the voters even a hint that the Proposal would infringe on the jurisdiction of the Supreme Court; that it would change the jurisdiction of the Courts of Common Pleas; that it would abolish certain existing courts; or that it would set up a new state-wide Commonwealth Court.

No single one of the categories of amendments contained in the proposed Judiciary Article had any necessary relation to or dependence upon any other category. For example, a change in the organization or jurisdiction of the Courts is a matter entirely separate from the manner of selecting judges or the manner of removing, retiring or disciplining them. If a voter actually knew what he was voting upon, he might well have approved *some* of the changes made by the proposed Judiciary Article but be completely opposed to *others*. Yet, he was given no choice. He has to take "all or nothing," without any adequate information as to what he was voting upon. It is precisely this type of "package deal" which Article XI, Section 1, of the Pennsylvania Constitution forbids.

The questions raised by this appeal are still justiciable. The basic issue is whether the purported consent of the electorate was *validly* obtained. In *Armstrong v. King*, 281 Pa. 207, 217, your Honorable Court recognized that such an issue will survive the referendum:

> "(if) the alleged defects are so serious as to lead to a belief that the people were not properly advised * * * or at the polls a fair vote was not obtained."

Furthermore, the case involves Federal issues arising under the Due Process Clause and Equal Protection Clause of the 14th Amendment to the U. S. Constitution. No judge-made rule of "justiciability" by a State Court can prevent a determination of the questions whether the make-up of the Convention and the manner of submitting its proposals violated the Federal Constitution. This necessarily follows by reason of the Supremacy Clause of Article VI of the U. S. Constitution.

As stated in *Lucas v. Colorado General Assembly,* 377 U. S. 713, 12 L. ed. 2d 632:

> "A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be."

The appellants' challenge to the propriety of the procedure was made before the election was held. The people should not be denied their constitutional rights to be fully advised of the true nature and content of proposed constitutional changes merely because the court below erroneously refused to grant a preliminary injunction, or because this Court postponed review until after the election was over. Indeed, the Order of this Court, of April 18, 1968, declining immediate review, was expressly stated to be "without prejudice." The constitutional rights of the people can still be vindicated by this Court. Your Honorable Court has not hesitated to set aside a referendum where there was a material departure from the requirements of a valid *statute: Kittaning Country Club's Liquor License Case,* 330 Pa. 311, 318. You should not hesitate to set aside a referendum held in flagrant violation of the *Constitution,* and also in violation of the basic right of the people to Due Process of Law. Justice to the people and regard for their constitutional rights demands no less.

CONCLUSION.

For the foregoing reasons Your Honorable Court is requested:

(1) To declare the provisions of the Act of March 15, 1967, No. 2, relating to the time and period of publication and the time for conducting a referendum on the convention's proposals to be unconstitutional and void; and

(2) To declare the referendum held at the 1968 Primary to be in violation of the Constitution, void and of no effect.

Respectfully submitted,

W. J. KRENCEWICZ,
Attorney for Interested Person
Under Rule 65.